

SUPREME COURT STATE OF NEW YORK
APPELLATE DIVISION FIRST DEPARTMENT

BECHIR LOUATI,

Petitioner-Appellant,

AFFIDAVIT OF
JEAN F. GERBINI
IN SUPPORT OF
PETITION OF UNITED
POLICYHOLDERS TO
APPEAR AS AMICUS
CURIAE

-against-

Index No. 150888/16

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent – Respondent.

STATE OF NEW YORK)
 : ss.:
COUNTY OF ALBANY)

JEAN F. GERBINI, being duly sworn, deposes and says:

1. I am Of Counsel with the law firm of Whiteman Osterman & Hanna LLP, counsel for proposed *amicus curiae*, United Policyholders (“UP”), in this appeal. I am a member in good standing of the Bar of the State of New York.

2. I submit this affidavit in order to place before the Court this application of UP to file an *amicus curiae* brief in the above captioned appeal.

3. I submit this affidavit upon information and belief, based upon my familiarity with the work of UP, review of its pleadings and papers and conversations with my client.

4. UP is a non-profit 501(c) (3) organization, headquartered in California. Founded in 1991, UP advocates for the interests of consumers of insurance throughout the United States, and serves as an information resource for individual and commercial policyholders with regard to every type of insurance product. Grants, donations and volunteers support the organization's work. UP does not sell insurance or accept funding from insurance companies.

5. UP's work is divided into three program areas: *Roadmap to Recovery* (disaster recovery and post-loss claim help), *Roadmap to Preparedness* (disaster and financial preparedness), and *Advocacy and Action* (advancing pro-consumer laws and public policy through legislative advocacy and *amicus curiae* briefs). UP hosts a library of informational publications, videos, news articles, and other resources related to personal and commercial insurance products, coverage, and the claims process on its website at www.uphelp.org.

6. UP has been serving New York policyholders since the 1990s and has been particularly active in the state since Superstorm Sandy caused extensive damage for residential and commercial property owners. UP works with elected officials, the Department of Financial Services, law schools such as the Touro Law

Center (Central Islip), and other non-profits to help individual home and business owners resolve insurance-related issues. UP is involved in projects related to Superstorm Sandy claims and recovery, property insurance availability on Long Island, claim dispute mediation programs and reforms to the National Flood Insurance Program.

7. State insurance regulators, academics, politicians, and journalists throughout the U.S. routinely seek UP's input on insurance and legal matters. UP's Executive Director, Amy Bach, Esq., has been appointed for seven consecutive years as an official consumer representative to the National Association of Insurance Commissioners and has served in the New York legislature as a staffer on insurance and consumer protection issues.

8. UP assists courts as *amicus curiae* in appellate proceedings throughout the state and federal courts of the United States, including the United States Supreme Court. See, e.g., *Heimeshoff v. Hartford Life & Accident Ins. Co. and Wal-Mart Stores, Inc.* (Case No. 12-729, 2012); and *Montanile v. Board of Trustees of the National Elevator Industry Health Plan* (Case No. 14-723, 2015). UP has also appeared as *amicus curiae* in many important insurance coverage cases in the New York Court of Appeals. See, e.g., *Bi-Economy Market, Inc. vs. Harleysville Ins. Co. of New York* 856 N.Y.S. 2d 505 (2008); and *In the matter of Viking Pump and Warren Pump, insurance appeals* (Case No. CTQ-2015-0003, 2016).

9. The issue in this appeal is scope of the appraisal process – an issue that is critically important to insurance policyholders as a cost-effective dispute resolution process. UP appears for the purpose of providing the Court with its unique and credible consumer perspective, rather than to duplicate arguments made by counsel for the Parties.

10. UP submits herewith its proposed **Memorandum of Law**, annexed as **Exhibit 1** to this Affidavit. UP observes there that appraisal is the appropriate means to resolve a dispute over the extent of work needed to effect proper repair after an indisputably covered cause of loss. UP further observes that appraisal in this case is consistent with the plain words of New York’s appraisal statute, legislative history and public policy, and properly balances the interests of insurer, insured and the judicial system. UP itself gave voice to consumers during the drafting of the 2014 amendment to the appraisal statute—presenting a very similar fact pattern as an example of an appraisable matter.

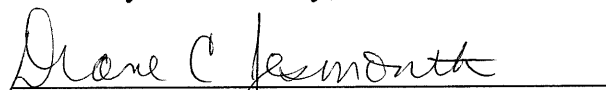
11. On behalf of United Policyholders, I respectfully request the Court to grant United Policyholders’ petition to file the accompanying Memorandum of Law as *amicus curiae*.

WHEREFORE, it is respectfully requested that this Court issue an Order granting United Policyholders' petition to appear as *amicus curiae* with respect to this appeal.



JEAN F. GERBINI

Sworn to before me this
23rd day of February, 2018



Notary Public, State of New York

4829-7863-2542, v. 3

DIANE C. JESMONTH
Notary Public, State of New York
Qualified in Albany County
No. 01JE4802044
Commission Expires February 28, 2019